

sreeram.
IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1932 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

MUKESHBHAI VAJUBHAI KOLI

Versus

POLICE COMMISSIONER

Appearance:

MR SHAKEEL A QURESHI for Petitioner

MR UR BHATT, APP for Respondent No. 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 29/04/98

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner calls in question the legality and validity of order of detention dated 13th August 1997, passed by the Police Commissioner for the City of Rajkot, invoking his powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities

Act, (for short, 'the Act).

2. In order to appreciate the rival contentions, necessary facts may be stated. The Police Commissioner for the Rajkot City came to know that the petitioner was harassing the people carrying out his nefarious and subversive activities, as a result, the people were feeling insecure. It also came to the notice that the petitioner, dealing in liquor in huge quantity, was a brute. He was supplying liquor to different agencies at different places, and for carrying on his such business smoothly, he was forcing the people by coercive ways to succumb to his unjust demands and help him. Those who refused had to face dire consequences. He was keeping lethal weapons and their hazardous use was not unknown. He used to harrow. Because of his activities babels in public places were often taking place. By passage of time, people considered him to be the butcher. Everyone feeling insecure were keeping his lips tight; and feeling not free chose to suffer misery and woes, and fester. Under the influence of liquor, the petitioner used to ogle the women and girls passing by the road, and abuse. He used to extort money or nobble; and at times mobbed and molested people. The Police Commissioner came to know about four cases being filed with the 'B' Division Police Station and Prohibition Police Station alleging that the petitioner was found in possession of 5 litres to 15 litres of liquor without any pass or permit, and had thereby committed the offences punishable under Sections 66(b), 65(e), and 81 of the Bombay Prohibition Act. Because of such activities, the Police Commissioner also realised the possibility of mischief to the public health and events like hootch tragedy could not be denied. He decided to record the statements of certain persons, knowing that the anti social activities i.e. nefarious and subversive activities of the petitioner were going berserk and people were feeling insecure. Because of fear of instant death or injury no one was willing to come forward. After considerable persuasion some of them showed their willingness to give statements, and that too when the assurance was given that the particulars disclosing their identity would be kept secret. On perusing the statements recorded, the Police Commissioner was fully satisfied that the petitioner was a bootlegger and dangerous person i.e. tartar or a malefactor, and his anti social activities disturbing the public order were required to be curbed at the earliest. He, therefore, preferred to have stern action against the petitioner. He however realised that any action if taken under general law would not yield any meaningful result, and the only way out was to pass the impugned order. In

the result, the impugned order came to be passed pursuant to which the petitioner is kept under detention. The petitioner has, therefore, filed this application challenging the legality and validity of the detention order.

3. On several grounds the order is challenged, but after I made a query, both the learned Advocates representing the parties tapered off their submissions confining to the only point, namely, whether the activities of the petitioner can be said to be affecting prejudicially to the maintenance of public order. According to the learned Advocate representing the petitioner, even if it is assumed that the petitioner was a bootlegger by that mere fact he cannot be branded to be the "dangerous person" unless it is shown by the other side that his activities adversely affected, or likely to affect adversely to the maintenance of public order. In reply to such submission, it is the contention of the learned APP that, whenever a person deals in huge quantity of liquor, the public health is going to be marred, and may lead to hootch tragedies. Such activities, will therefore, certainly adversely affect the maintenance of the public order. There is, therefore, no reason to upset the order.

4. Before dealing with the rival contentions, the decision on the point rendered by the Supreme Court in the case of PIYUSH KANTILAL MEHTA v. COMMISSIONER OF POLICE, AHMEDABAD CITY AND ANR., reported in AIR 1989 SC 491 may be referred to. It is held in that case, that the detenu may be a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger, he cannot be preventively detained under the provisions of the Act, unless his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of the public order. A person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise and it must be shown by the detaining authority that there has been a feeling of insecurity among general public and by different activities or acts the detenu created panic or fear in the minds of the members of the public upsetting even the tempo of life of the community. It is also held that if the detenu is a bootlegger and indulge in use of force or violence, or by illegal sale of liquor, created an atmosphere of fear and terror by beating innocent citizens, such minor incidents viz. beating the witnesses or behaving highhandedly, or bickering, or that he was not afraid of police; or

always kept a knife and/or a revolver with him and threatened some persons would not be sufficient to hold that the case is about the maintenance of public order, and not the law and order. In that case, it was held that it was the case which could effectively be dealt with under general law. The detention was then set aside and quashed.

5. It is pertinent to note that no affidavit has been filed by the other side and no other material is placed before me in order to point out that the activities of the petitioner have become a challenge to the maintenance of public order. It is likely that for effecting the sale of liquor some times, the petitioner might have picked up quarrels, or might have used some force, but such minor incidents as made clear by the Supreme Court in the above referred decision would not be sufficient to hold that the same are the challenge to the maintenance of the public order. Such wrongs can well be dealt with under the general law. The same therefore, would be a case of "law and order" and not a "public order". The order in question in the result, cannot be sustained. The same being illegal, is required to be quashed and set aside.

6. For the aforesaid reasons, the application is allowed. The impugned order dated 13th August 1997 is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is accordingly made absolute.

sreeram.